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SIPDIS

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SUBJECT: BEST BAKERY STAR WITNESS CHANGES TESTIMONY...AGAIN

REF: A. 03 MUMBAI 828; B. 03 MUMBAI 1033; C. 03 MUMBAI 1486; D. 04 MUMB
1826; E. NEW DELHI 2185

1. (SBU) Summary. On November 4, 2004, star eyewitness Zaheera Shaikh of the emblematic/symbolic Best Bakery case from the March-May 2002 violence in Gujarat, refused to testify in the Mumbai special court. A day earlier she had appeared with her brother, another key witness, at a press conference in the siblings' home town in Gujarat hurling accusations at an NGO and a well-known human rights activist that had been supporting her case. In April 2004, the Indian Supreme Court ordered that the Best Bakery case be retried in Maharashtra, because of appeals made by Zaheera, the National Human Rights Commission (NHRC), and the voluntary organization Citizens for Justice and Peace (CJP) that the victims were terrified of testifying in any court in Gujarat. According to some of the political and human rights contacts we spoke to, Zaheera's repeated recantations of what occurred in 2002 (she has already given three contradicting accounts of the incident) will be a major setback to the justice process in Gujarat; however, editorial opinion argues that the other riot cases will continue unaffected by the recent turn of events (refuels). End Summary.

2. (U) On November 3, 2004 Zaheera Shaikh appeared at a press conference in her home town of Vadodara, Gujarat, and made accusations against Mumbai-based human rights activist Teesta Setalvad and CJP that she was "[coerced] to name political figures" and was "being held against her will." Both have championed Shaikh's cause since July 2003. She also stated that four of the accused were not involved in the bakery arson. She claimed that Setalvad coached her into naming them in her affidavit to the Indian Supreme Court. Gujarat chief minister Narendra Modi of the BJP immediately told the media that the role of certain NGOs who are unduly trying to influence the judicial process should be examined. As the news of Zaheera's press conference reached Mumbai, defense counsel Adhik Shirodkar proclaimed, "this lends credence to our claim that she was being coached all along to name my clients, who were not even in Vadodara on the day of the arson."

3. (U) Also on November 3, 2004, the Government of Maharashtra (GOM) prosecutorial officers requested the court to declare Zaheera's brother Nafitullah an "absent witness." The court was informed that he disappeared on October 25, 2004 in spite of being under police protection. Instead of court, Nafitullah appeared with Zaheera at her Vadodara press conference. Zaheera also risks being declared absent as she did not appear in court on November 4, 2005. The GOM is reporting that they believe that their case is not weakened as the case against the rioters is not solely dependent upon Zaheera's testimony and other witnesses have already testified.

What is driving Zaheera?

4. (U) In media interviews, Teesta Setalvad categorically denied the allegations. She further suggested that Zaheera and her brother have been "got at" - either threatened with retaliation or bribed - to change their testimony. Setalvad did not say who might have threatened or bribe the witnesses. Some media are suggesting that the root cause of the change in testimony is because Zaheera was attempting to extort a more comfortable life in Mumbai from CJP (who Zaheera believed had received large amounts of cash due to her case). When CJP did not meet Zaheera's demands, Zaheera recanted.

5. (SBU) Our media contacts have told us that they themselves suspected something was amiss in the Setalvad-Zaheera relationship for the past three months. Setalvad refused to tell anyone where Zaheera was located, which could be due to witness safety considerations; however, our contacts reported that Setalvad even denied cell-phone interviews. Another NGO activist from Ahmedabad said, "What we are calling Setalvad's over-protectiveness, Zaheera is calling 'being held against her wishes.' How can we blame her?"

6. (SBU) A senior lawyer practicing in the Gujarat high court told us, "Even in case of her initial statement in Gujarat court in May 2003 which caused the accused to be let off, my information is that she was promised money by the accused, but did not get it. So she held a media conference in July 2003 saying she lied in court. If the NGO says she is lying for money now in October 2004, the accused are going to turn around

and say that she was lying for money in July 2003."

Implications for Gujarat Justice Process

17. (U) The human rights community is divided about the implications of the latest theatrical developments in Zaheera's case for the justice process in Gujarat. By the end of the violence in May 2002, Gujarat police registered more than 4000 cases, but only 2000 were taken to court. The other cases were summarily closed with officials stating that while a crime had been committed, the identity of the perpetrators could not be ascertained. In June 2004, the Indian Supreme Court directed the Gujarat police to appoint a high-level committee to go into each of the summarily closed cases. That process is underway.

18. (U) Out of the remaining 2000 cases, the Indian Supreme Court has stayed trials in ten major arson cases (including the Godhra train burning that set off the violence), while the other 2000 odd cases are winding their way through the Gujarat lower courts. After the Indian Supreme Court put Zaheera's case under the microscope in July 2003, Gujarat lower courts have handed out punishments to perpetrators in some 200 cases (the accused could still be exonerated on appeal to the Gujarat High Court.) Alluding to this, some media editorial pages have strongly suggested that Zaheera's recantation wouldn't derail the process already set in motion. Correspondents from some of the very same media outlets, however, reported that human rights community in Gujarat is discouraged while those awaiting trial are hopeful that they too will have their cases called into question.

19. (SBU) A Mumbai-based human rights activist told us, "the real tragedy of this drama is that the retrial will lose importance in the mind of the media compared to Zaheera's antics. Not only that, in other trials too, people will suspect that the victims are trying to cash in just like Zaheera. I think it is a serious setback." Another said, "Teesta Setalvad was following a risky strategy of basing too much on a single testimony. At least the GOM prosecutors have been thorough in securing testimony of other witnesses. So the case still might reach a reasonable verdict."

10. (SBU) Ahmedabad-based human rights activist Father Prakash (who is closely associated with Setalvad) said, "The court is not foolish. It understands that this girl has given three different versions already. Other witnesses have testified. Neither this retrial, nor others in Gujarat are going to suffer in any way. The justice process is firmly underway."

Comment:

11. (SBU) Zaheera's dilemma highlights the internal contradiction in the justice process after incidents of mass violence in India. The poor or not so poor victims may be bought over easily because they want to pick up the pieces of their lives and move on, while the champions of justice -- whose lives were in no way affected by the violence -- hope the victims stick to their testimony. It is too early to state whether or not the justice system, which seemed to be exercising its independence by removing the case from Gujarat, will be dramatically impacted by these events. Zaheera's changing testimony does, however, highlight basic problems of the entire system. Whatever the true reason for Zaheera's change in testimony, the fact that the media and our contacts seem to feel that all explanations are equally viable (being threatened, being bribed, or actively trying to sell testimony) indicate that basic safeguards to protect the witnesses are still weak in these highly charged cases.

SIGNATURE